

# *Survival of the Fittest*

THE CONGRESSIONAL CALENDAR  
AND FEDERAL LEGISLATION IN 2016

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# In vs. Out for 2016: Political Edition

## Out:

- John Boehner's Tan
- Debt Ceiling Debate
- House/ Senate debates
- K-12 Education
- No Child Left Behind
- Legislation

## In:

- Paul Ryan's Beard
- Entitlement Reform
- Presidential Debate
- ??????
- Every Student Succeeds Act
- Regulations

h/t to [ASCD](#)

# LEADERSHIP BATTLES

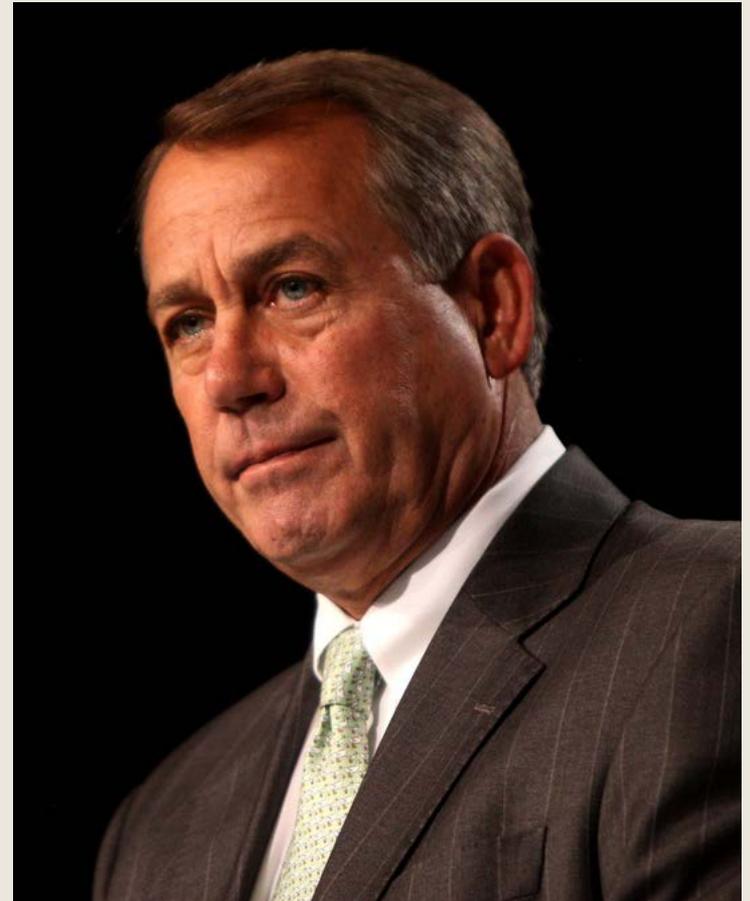
# Also known as...



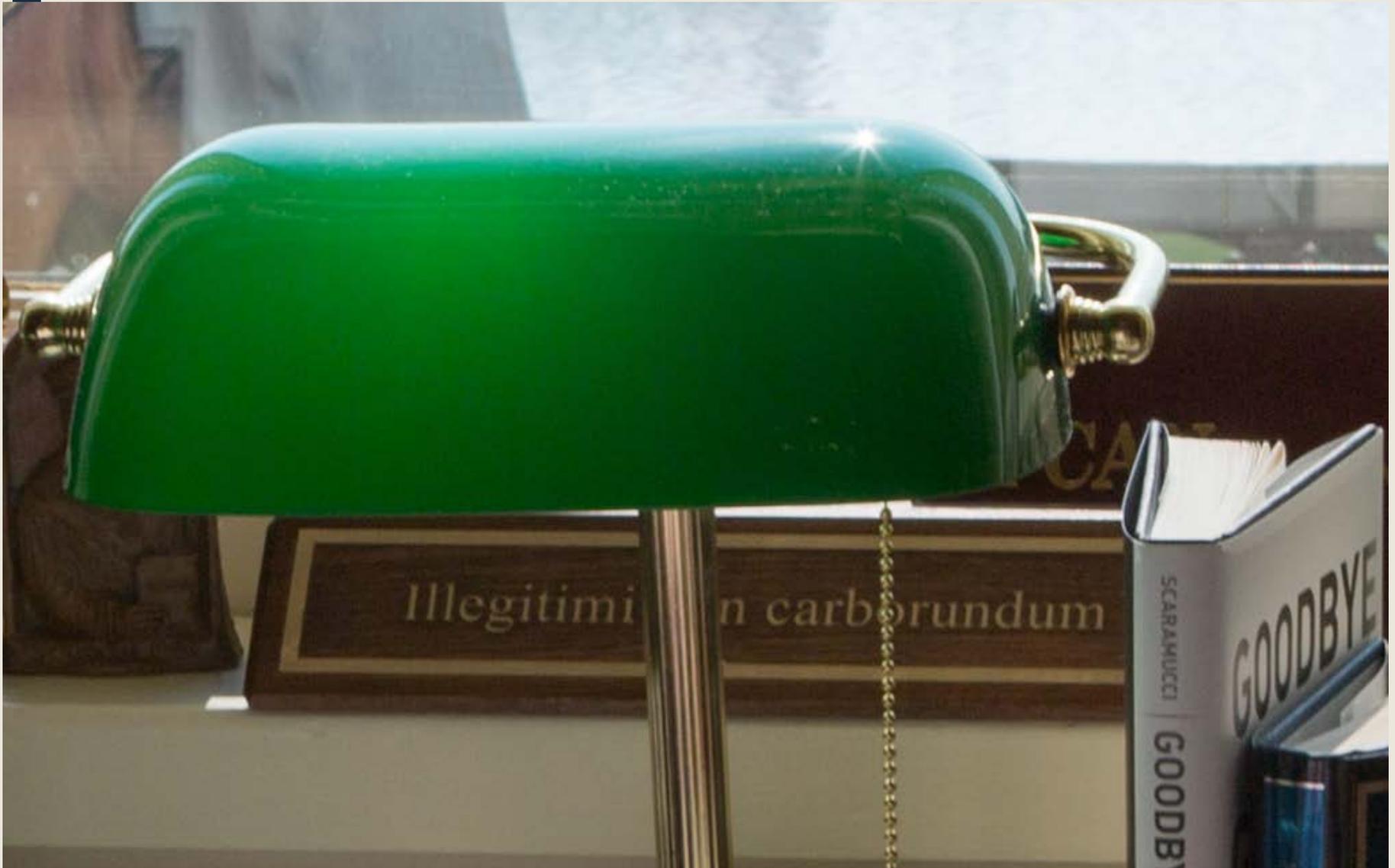
*Game of Thrones ?*

# The Deposed Ruler

- Conservative Republicans in Congress suggested they would force a no-confidence vote in Speaker John Boehner (R-OH)
- Boehner then announced he would leave his position – and Congress – by the end of October







**“Illegitimi non carborundum”**



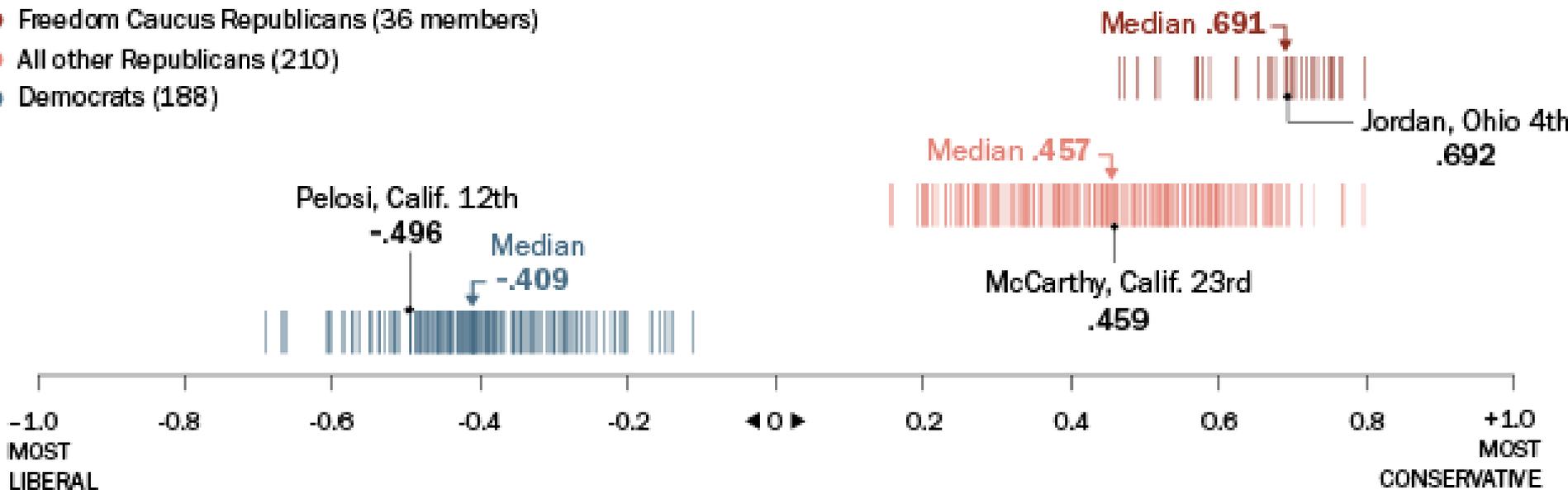
Brustein & Manasevit, PLLC © 2016. All rights reserved. *"The kid's good."*

# The Rebel Army

## Typical Freedom Caucus Member Is More Conservative Than Other Republicans

*Ideological scores of representatives in the 114th Congress, based on roll call votes*

- Freedom Caucus Republicans (36 members)
- All other Republicans (210)
- Democrats (188)



Source: Pew Research Center

# The Presumptive Replacement



- Majority Leader Kevin McCarthy was Boehner's pick for replacement
- Also next in "line"
- But McCarthy had trouble garnering sufficient support from conservative Republicans in House Freedom Caucus (HFC)
  - *Painted him as Boehner 2.0*

# The Presumptive Replacement

- After attack from HFC, McCarthy withdrew from race, leaving GOP without clear leader



# The Other Candidates



- Jason Chaffetz (UT) – current Chairman of House Oversight and Government Reform Committee
- Daniel Webster (FL) – leader in House Freedom Caucus
- Steve Scalise (LA) – current Majority Whip
- Newt Gingrich
  - *Said he would come out of retirement*
- No one?
  - *Republicans suggest temporary “caretaker” if no candidate can be found*

# The Reluctant New Leader



- Paul Ryan (R-WI) originally not a candidate
- Many, including Boehner, reportedly urged him to run
- In exchange, Ryan extracted a number of concessions:
  - *Would not have to campaign*
  - *Would not have to fundraise*
  - *Would not have to stay in DC on weekends, summer*
  - *Change caucus rules to limit ability of HFC to remove him*
- Elected Speaker on 10/29

# “Cleaning the Barn”

- In days leading up to Speaker election, Boehner attempts to move controversial and/or personally meaningful legislation
  - *Reauthorization of DC voucher program*
  - *Legislation to raise debt ceiling*



# What does Ryan mean for education?

- As chairman of House Budget Committee, pushed for across the board spending cuts
  - *Wants to cut ED staff, calls ED “fragmented and ineffective”*
- Wants to streamline/cut federal education programs
- As vice presidential candidate in 2012, supported school choice
- Supported House ESEA bill
  - *Critical of ESEA waivers: “States are beholden to a set of federal requirements that were crafted without congressional approval”*

# PROGRESS ON SPENDING

# FY 2016 CR

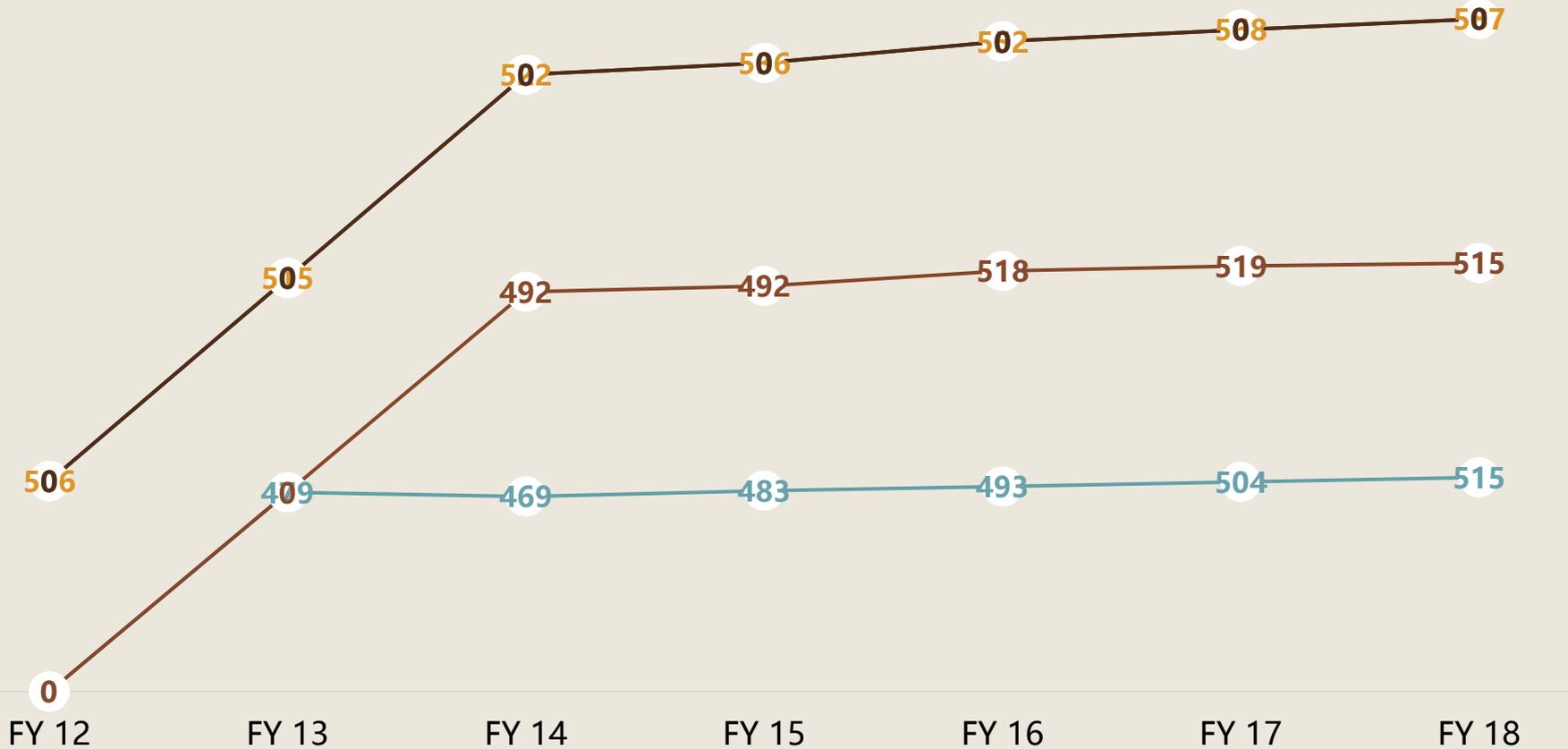
- FY 2015 Appropriations expired on September 30, 2015
- In days and weeks leading up to deadline, conservative Republicans indicated they wanted to make appropriations conditional on de-funding Planned Parenthood
- Boehner negotiated deal with conservatives to pass “clean” CR (with no policy changes)
- Funded all programs at FY 2015 levels, minus 0.2108% through December 11th

# A New Budget Deal

- Two-year deal (like 2013 deal)
- Delays debt ceiling debate until 2017
- Offsets projected changes by extending sequestration by two years (now through 2025)
- Additional cost offset: repealing ACA auto-enrollment requirement
- Increases allowed funding for non-defense discretionary by \$25 billion in FY 2015 and \$15 million in FY 2016
  - *No requirement for appropriators to spend this*

# Non-Defense Spending Caps

(in billions of dollars)



—●— Original Sequestration Caps

—●— Adjusted Sequestration Caps

—●— FY 2012 adjusted for inflation

# FY 2016 Appropriations

- Omnibus appropriations bill passes December 18<sup>th</sup>
  - *Funds government through September 30, 2016*
- Policy riders: ending oil export band, toughening visa requirements
- Overall: small increase in funding (2-3% on average; varies by program)
  - *Title I increases \$500 million to \$14.9 billion*
  - *IDEA increases \$415 to \$11.9 billion*
  - *Perkins level-funded*
  - *AEFLA increases by \$13 million to \$582 million*

# What's Next?

- Congress wants to pass individual appropriations bills and send them to President's desk
  - *Based on budget deal*
  - *Hasn't been done in years*
- Debate over policy riders will return
  - *May be different issues*
- BUT election complicates timeline and makes CR more likely

# SOME PROGRESS ON POLICY

# Every Student Succeeds Act

- ESSA signed into law on December 10<sup>th</sup>, 2015 after nearly a year of debate and vote
- Much more work on implementation to come!



# Every Student Succeeds Act

- Looks a lot like No Child Left Behind:
  - *States choose standards and assessments, work towards goals*
  - *Student achievement is reported out by subgroup*
  - *Schools and districts are held accountable for subgroup performance*
  - *Funding flows from ED to States to districts to schools*
  - *Maintains major formula grant funding streams (and many competitive programs too)*

# Every Student Succeeds

## Act

### ■ Key Differences

- *States now in the driver's seat*
  - Much more authority to make decisions, choose standards and assessments, goals, and means of accountability
  - States also responsible for enforcing many requirements
  - (though subject to ED regulation)
- *The "big acronyms" have been eliminated*
  - No more AYP, HQT, or SES
- *New limitations on Secretarial authority*
  - Especially around State plans, waivers
- *Consolidates/eliminates a number of smaller grant programs*

# Child Nutrition

- Healthy, Hunger-Free Kids Act Expired September, 2015
  - *Extended through appropriations bills*
- Lots of false starts for reauthorization
  - *Markup scheduled for September 2015, then cancelled*
  - *Expected to be rolled into omnibus appropriations bill*
- Text of bill released January 18<sup>th</sup>, 2016
  - *Markup scheduled for July 20<sup>th</sup>*



# Child Nutrition

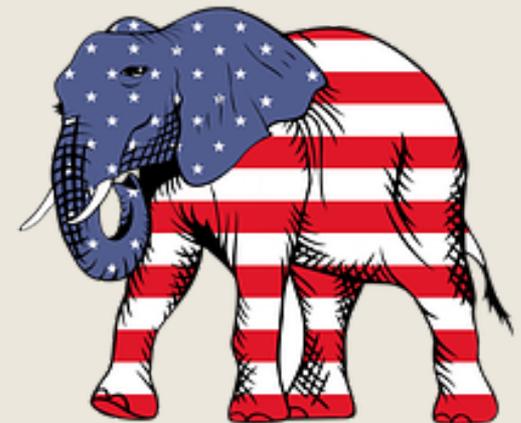
- Improving Child Nutrition Integrity and Access Act of 2016
  - *Increases verification sample size to 10%*
    - May be reduced if LEA meets certain targets
  - *New FFVP “hardship exemption” to serve all forms of fruit/vegetables for up to 3 years*
    - Gradually reduces amount of frozen/dried/canned foods allowed
  - *Flexibility on meals:*
    - Whole grain requirement decreases to 80%
    - No requirement to implement tiered sodium reduction targets until 2019 (2-year delay) and then study will be done to determine feasibility
  - *Changes dates for publication of new rates, other requirements earlier in the year. Sets timelines for publishing regulations.*
  - *Passes unanimously out of committee on January 20<sup>th</sup>, 2016*

# THE ELEPHANT(S) IN THE ROOM



# Election 2016

- All of House is up for reelection
- 1/3 of Senate campaigning
- Most importantly: Presidential campaign
- Candidates in Congress include:
  - *Sen. Ted Cruz (R-TX)*
  - *Sen. Marco Rubio (R-FL)*
  - *Sen. Rand Paul (R-KY)*
  - *Sen. Bernie Sanders (D-VT)*



# Education Issues for the Candidates

## ■ Sanders:

- *Free college (or drastically reducing college costs)*

## ■ Clinton:

- *New Focus on autism*
  - Pass "Keeping All Students Safe" Act
  - Strengthen U.S. Department of Education guidance to protect students in special education from bullying
  - Launch a new "Autism Works" initiative to help students with autism find employment after high school
- *Charters should serve as a "supplement, not a substitute" for traditional public schools*
- *No teacher evaluations based on student test scores*
- *Focus on early education*

# Education Issues for the Candidates

- Bush

- *Focus on Common Core*
- *Charters and other avenues of school choice also important*

- Fiorina

- *Supports vouchers, charters*
- *Critical of Common Core*

- Paul

- *Wants to get rid of Common Core*
- *Supports charters, vouchers*

# Education Issues for the Candidates

## ■ Christie

- *Signed on to Common Core as governor, but says he now regrets it*
- *Supports charter schools (and for-profit charter school operators), vouchers*
- *Wants greater transparency in college tuition*
- *Should refocus student financial aid for lower income students*

## ■ Carson

- *Supporter of charters, “market-based” reforms*
- *Wants to get rid of Common Core*

# Education Issues for the Candidates

## ■ Rubio

- *Against Common Core*
- *Pro-vouchers, charters, school choice*
- *Reform college accreditation*
- *Income-based student loan repayment*

## ■ Trump

- *Supporter of charters, choice*
- *Dislikes Common Core*
- *Wants to shrink Department of Education*

## ■ Cruz

- *Wants to repeal Common Core*

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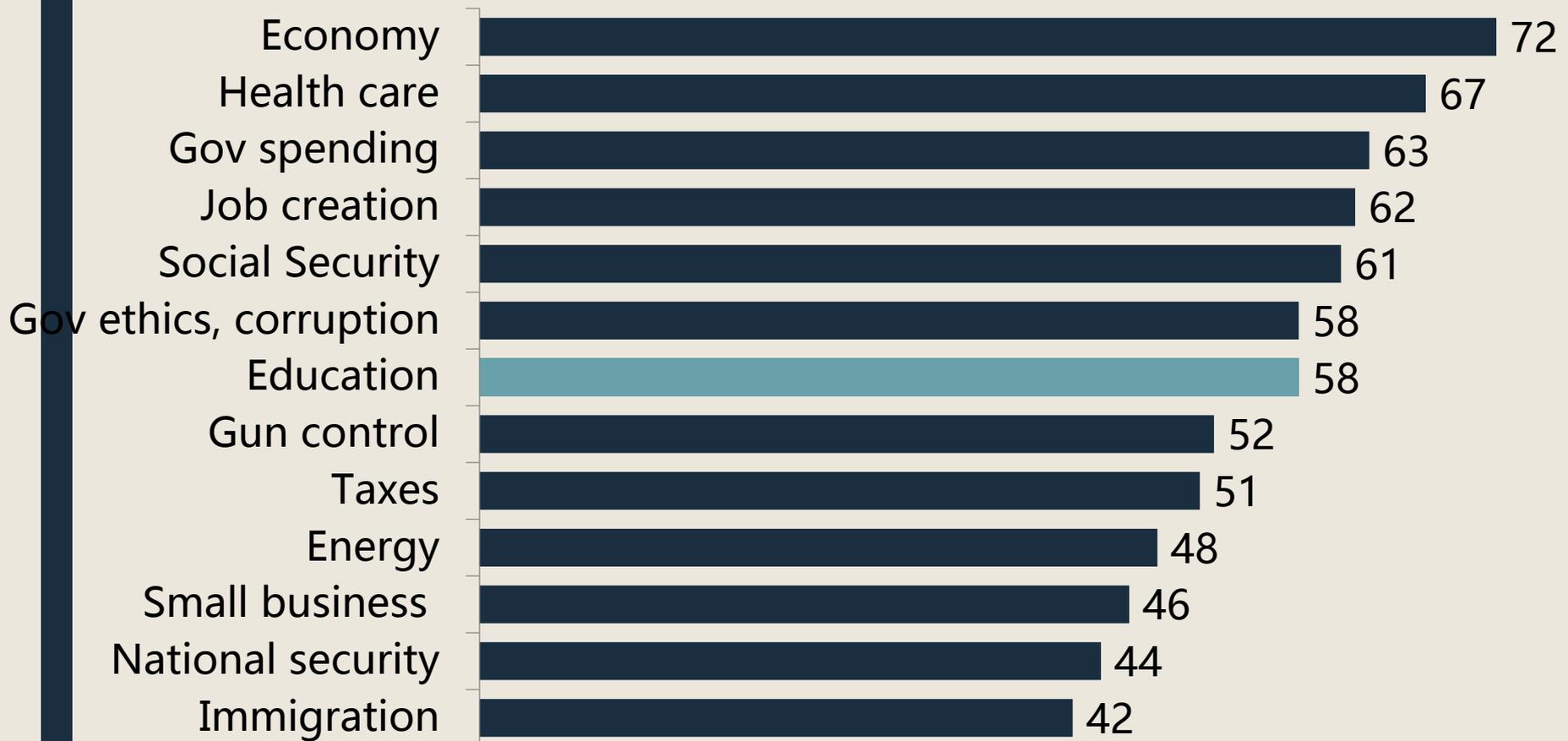
# Education Issues for the Candidates



- No Child Left Behind being overturned negates several key issues:
  - *Vouchers*
  - *Common Core*
  - *Teacher Evaluations*
- Leaves:
  - *Size of Department of Education (also partially addressed in ESSA)*
  - *Student loans*
  - *Others???*

# How will this election be decided?

"I'm now going to read you a short list of issues in the news. For each, please tell me how important that issue is in terms of how you will vote in the next congressional election." *Showing Very Important*



Source: Rasmussen; June 2014

# What happens in Congress during an election year?



- All actions taken from perspective of campaign to:
  - *Solidify support from base*
  - *Avoid potentially controversial issues/votes*
  - *Good publicity/sound bites*
  - *Will it raise candidate's profile?*

# What happens in Congress during an election year?



# What does this mean for education?

- Look at issue and ask:
  - *Who is it important to?*
    - How many of them are there? How likely are they to vote? Do politicians care about their vote?
  - *How important is it to voters?*
    - Will it drive votes?
  - *How marketable is it?*
    - Can you boil it down to a soundbite?
  - *What is the risk?*
    - Will wading into the issue cause more problems than it garners votes?

# Election's Impact on Legislative Timeline

- Election means majority party will want to delay passage of important legislation as long as possible
  - *If Republicans expect to win White House, want to delay passing important legislation until new President is in office*
  - *If Republicans don't win; or if they lose House/Senate, can still pass legislation during lame duck session*
  - *Includes:*
    - Potentially partisan policy legislation
    - **Appropriations bills**



# LIKELY LEGISLATIVE PRIORITIES?



# Policy

- Carl D. Perkins Career and Technical Education Act
  - *Last reauthorized in 2006, reauthorization due 2013*
  - *Senate effort being led by Mike Enzi (R-WY) and Bob Casey (D-PA) of HELP Committee*
    - Solicited input via e-mail in October 2015
  - *House Committee held first of an anticipated series of hearings in October 2015*
  - *Relatively uncontroversial, so good candidate for quick movement in down time (like WIOA)*

# Policy

- Senate Committee “principles” for reauthorization:
  - *Make CTE programs easier to administer*
  - *Increase access to career counseling for CTE students*
  - *Maintain CTE as a formula program (not a block grant)*
  - *Align with ESEA and WIOA*
  - *Support the expansion of public/private collaborations*
  - *Integrate into career pathways at state and local levels*
  - *Address unfunded programs*
  - *Support innovation and best practices*

# Policy

- Higher Education Act
  - *Both House and Senate have solicited input and held hearings*
  - *Will be controversial because of the issues with student financial aid, college ratings, for-profits, etc..*
  - *Save for non-election year?*

# Policy

- Individuals with Disabilities Education Act (IDEA)
  - *No progress to date*
  - *No indication of push to reauthorize*
  - *Major issue is federal share of funding, not contents*
  - *In purgatory*



# THE SHIFTING BATTLEFRONT



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- **Regulations**

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# ESSA Regulations

- ED held public meetings on 1/11 (DC) and 1/19 (Los Angeles)
  - *Soliciting input on where regulations are needed*
- Negotiated rulemaking required on several issues
  - *Including Supplement-not-Supplant, standards, assessments,*
  - *Dates and process TBD*
  - *If negotiated rulemaking process fails, new language allows Congress advanced review and comment period for regulations ED drafts instead*
- Other regulations to be issued at some point in 2016

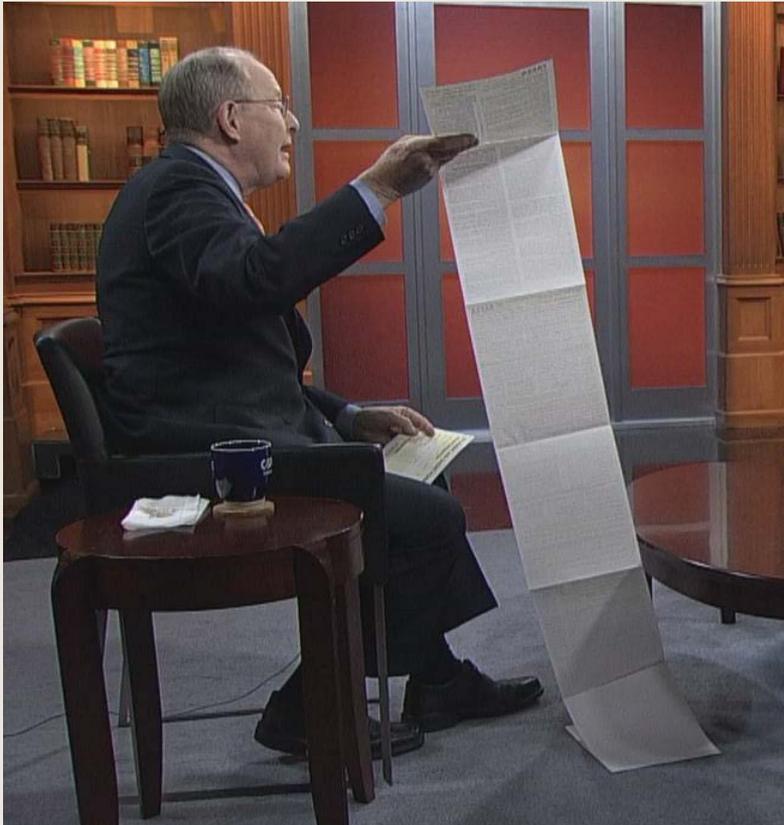
# Studies

- Law requires Institute for Education Sciences (IES) to conduct a number of studies:
  - *Title I formula*
    - Must study the effectiveness of the four Title I formulas and consider the impact of number and percentage weighting
    - Must enumerate impact on 12 types of locales as classified by NCES
    - 18 month timeline
  - *Sample size (“n-size”)*
    - Must publish and disseminate a report on best practices for determining subgroup size
    - 90 day timeline

# A New Trend: Congressional Oversight of Regulations

- Legislation in recent years has trended toward more direction of agency activities and less agency discretion, e.g.:
  - *Improving Child Nutrition Integrity and Access Act of 2016 (PROPOSED) sets even more specific deadlines for interim/final regulations, advisory committees, dates for annual guidance/pricing*
  - *ESSA requires negotiated rulemaking on certain topics*
- REINS Act (PROPOSED!) would require any executive branch rule or regulation with an annual economic impact of \$100 million or more to come before Congress for an up-or-down vote before being enacted

# ESSA Oversight



- Lamar Alexander (R-TN) told C-SPAN he expects the federal role to be "very different" under ESSA.
- HELP Committee reportedly planning at least three oversight hearings on ESSA regulation in the coming year.

# ESSA Oversight

- New regulatory authority for Congress:
  - *Negotiated rulemaking required on some issues*
    - Sometimes this process fails to obtain consensus
  - *If ED issues regulations following a failed negotiated rulemaking session, it must:*
    - Provide an advanced draft of those regulations to Congress
    - Provide Congress with a special comment period

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